

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law:

1. First plea in law: Conditions of Article 107 TFEU are not met.

The applicant asserts that the EEG surcharge system and the special compensation regime of the EEG-Act 2012 already lack the classification as State aid within the meaning of Article 107(1) TFEU. In the event that a classification of the special compensation regime of the EEG-Act 2012 as State aid in this sense were to be affirmed, this would find its justification in Article 107(3)(b) and (c) TFEU (promotion of the execution of an important project of common European interest or the development of certain economic activities or areas without adversely affecting trading conditions contrary to the common interest) and would therefore not be contrary to State aid law.

2. Second plea in law: Inapplicability of the *Environmental and Energy State Aid Guidelines* (EEAG) relevant to the adjustment plan

The applicant asserts that the relevant EEAG with regard to the recovery amount pursuant to Article 3 of the Commission decision at issue, which apply from 1 July 2014, are, in the absence of the classification as State aid of the EEG surcharge system and special compensation regime of the EEG-Act 2012 instruments referred to and in the light of the principle of legality of administrative actions also applicable at EU level, not applicable to those instruments.

Action brought on 27 February 2015 — Bundesverband Glasindustrie and Others v Commission

(Case T-108/15)

(2015/C 138/82)

Language of the case: German

Parties

Applicants: Bundesverband Glasindustrie (Düsseldorf, Germany), Gerresheimer Lohr GmbH (Lohr, Germany), Gerresheimer Tettau GmbH (Tettau, Germany), Noelle + von Campe Glashütte GmbH (Boffzen, Germany), Odenwald Faserplattenwerk GmbH (Amorbach, Germany), O-I Glasspack GmbH & Co. KG (Düsseldorf), Pilkington Deutschland AG (Gelsenkirchen, Germany), Schott AG (Mainz, Germany), SGD Kipfenberg GmbH (Kipfenberg, Germany), Thüringer Behälterglas GmbH Schleusingen (Schleusingen, Germany), Neue Glaswerke Großbreitenbach GmbH & Co. KG (Großbreitenbach, Germany), HNG Global GmbH (Gardelegen, Germany) (represented by: U. Soltész and C. von Köckritz, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul Articles 1 and 3(1) of the decision of the European Commission of 25 November 2014, State aid No SA.33995 (2013/C) (ex 2013/NN) — C (2014) 8786 final, relating to the promotion of electricity generation from renewable sources and the payment of the EEG-surcharge for energy-intensive industries, in so far as those provisions provide for the following:
 - (i) the promotion of electricity produced from renewable energy sources on the basis of the German Law for the priority of renewable energy sources (Law on Renewable Energy Sources of 25 October 2008 in the updated version of 1 January 2012 — ‘the EEG 2012’) including its financing mechanism, and
 - (ii) support for the reduced EEG-surcharge for energy-intensive users (special compensation regime — BesAR) according to which Paragraphs 40 et seq of the EEG 2012, for 2013 and 2014, amount to unlawful existing State aid within the meaning of Article 107(1) TFEU, in infringement of Article 108(3) TFEU;

- annul Articles 2, 3(2), 6, 7 and 8 of the contested decision in so far as they declare the incompatibility of the BesAR with the internal market and an order for the repayment of State aid is made; and
- order the Commission to pay the costs incurred by the applicants.

Pleas in law and main arguments

In support of the action, the applicants rely on seven pleas in law:

1. The special compensation regime (BesAR) contains no State aid within the meaning of Article 107(1) TFEU, since there is no favourable treatment. The Commission wrongly assumes that the BesAR grants energy-intensive undertakings an advantage amounting to State aid.
2. The EEG-surcharge system and the BesAR contain no State aid, since there is no burden on the State budget. The regulation affects exclusively private funds. The contested decision is incompatible with the Court's case-law, in particular with the judgment in *PreussenElektra*.
3. The Commission wrongfully concluded in its statement of reasons that the BesAR has a selective character. There is, however, no derogation from the relevant reference system. In any event, the BesAR is justified by the nature and overall structure of the EEG 2012.
4. The Commission erred in law by assessing the eligibility of BesAR exclusively on the basis of the new Guidelines on State Aid for environmental and Energy 2014-2020.
5. Should the Commission come to the conclusion that the BesAR amounts to ineligible State aid, recovery would in any event not be applicable since at issue is 'existing aid'.
6. In addition, recovery is to be excluded on account of the protection of legitimate expectations. In particular, the Commission stated in an earlier decision that the EEG-System did not contain State aid.
7. Furthermore, enforcement of an order for recovery for BesAR would not be possible.

Action brought on 2 March 2015 — Saint-Gobain Isover G+H and Others v Commission

(Case T-109/15)

(2015/C 138/83)

Language of the case: German

Parties

Applicants: Saint-Gobain Isover G+H AG (Ludwigshafen am Rhein, Germany), Saint-Gobain Glass Deutschland GmbH (Stolberg, Germany), Saint-Gobain Oberland AG (Bad Wurzach, Germany) and Saint-Gobain Sekurit Deutschland GmbH & Co. KG (Herzogenrath, Germany) (represented by: S. Altenschmidt and H. Janssen, Rechtsanwälte)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the decision of 25 November 2014 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, C(2014) 8786 final;
- order the defendant to pay the costs.